

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 578 of 2000

in

SPECIAL CIVIL APPLICATION No 2196 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

I C PATEL

Versus

GUJARAT HOUSING BOARD

Appearance:

MR IS SUPEHIA for Appellant
MR HS MUNSHAW for Respondent No. 1
MR VM PANCHOLI, AGP for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/04/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

L.P.A is admitted. At the request of the parties, this appeal was taken up for hearing. The Counsel for the respective parties were finally heard.

This appeal is directed against the judgement and order dated 25.1.2000 passed by the learned Single Judge in Special Civil Application No. 2196 of 1999, whereby the claim of the petitioner for higher pay-scale of Rs. 2200-4000, which was earlier granted to him by the respondents by order dated 14.7.1992 has been negatived. The learned Single Judge while rejecting the petition also ordered for recovery of the excess amount paid to him.

The facts briefly stated are that the appellant original - petitioner was employed in Gujarat Housing Board in the post of Sub-Engineer on a pay-scale of Rs. 1400-2300. By resolution dated 5.7.1991, the Government framed a scheme of Higher Grade Scale, which was subsequently modified in the year 1994 by resolution dated 16.8.1994. However, in accordance with the provisions contained in the resolution dated 5.7.1991, the appellant was granted the higher grade scale of Rs. 2200-4000, by order dated 14.7.1992. Thereafter, when the subsequent resolution dated 16.8.1994 was passed by the Government, the respondent Board issued a circular dated 17.2.1995, changing higher-grade scale of Rs. 2200-4000 to Rs. 1640-2900. The action of the respondents were challenged by the appellant by filing a Special Civil Application No. 3909/96, which was allowed by judgement and order dated 20.10.1996.

Subsequently, there was an audit objection and on the basis of that audit objection, the Board took a decision that there was a mistake in upgrading and giving higher pay-scale to the appellant from 1400-2300 to 2200-4000 and as a matter of fact he should have been given the pay-scale of Rs. 1640-2900. On the basis of the above decision of the Board, directions were issued for recovery of the excess amount of payment in instalments. It is stated that difference of pay receivable by the appellant on the up-graded post, have already been directed to be deposited in the Provident Fund Account of the appellant. It is stated by the learned Counsel that the appellant has now retired, but the Board proposes to recover the alleged excess payment

from the amount which has been deposited in the Provident Fund.

The learned Counsel for the appellant has restricted his challenge only to the order of the Board directing recovery of the alleged excess payment. The learned Counsel contended that the appellant was not at fault when he was paid the salary on higher pay-scale of Rs. 2300-4000 for number of years. The learned Single Judge rejected the above contention by holding that if the upgradation on higher pay-scale given to the petitioner was a mistake, the Board was perfectly justified in correcting that mistake and ordering recovery.

We have heard learned Counsel Mr. H.S. Munshaw appearing for the Board, who has strongly supported the decision of the learned Single Judge and the action of the Board in recovering the excess payment of salary made to the appellant. After hearing the learned Counsel for the parties, we are of the opinion that the appellant should not be made to suffer for the mistake committed by the Board. As is mentioned above, the mistake is not merely clerical/arithmetical. Before implementing the scheme of upgradation the appellant was holding the post of Sub-Engineer and he was given the up-gradation and pay-scale of Rs. 2200-4000 prescribed for the post of Deputy Executive Engineer. Under the scheme, at the relevant time it was found that he was entitled to the pay-scale of Rs. 2200-4000 and not to the interim scale of Rs. 1640-2900. It is only when an audit objection was raised that the Board reconsidered its earlier decision that the higher pay-scale granted to the appellant as an interim-scale was clearly a mistake. The difference of amount of salary payable on fixation in the higher grade scale was duly credited in the Provident Fund Account. So far as correction of the mistake is concerned, the Board was right in rectifying the mistake by reducing the scale granted to the appellant in the upgraded post from 2200-4000 to 1640-2900. However, recovery of the amount excess paid to the appellant at this point of time amounts to imposing a sort of penalty or punishment. The mistake was committed by the Board, for which the appellant should not be penalised. Recovery of the excess payment made to the appellant for no fault on his part appears to be wholly unjustified.

For the reasons aforesaid, we partly allow this appeal. The impugned order dated 25.1.2000 passed by the learned Single Judge is set aside in so far as direction for recovery of excess amount paid to the appellant is

concerned. The action of the respondent Board in giving the Higher Grade Scale of Rs. 1640-2900 is upheld, but the Board is restrained from making any recovery of excess payment made to the appellant on his earlier upgradation and fixation in the pay-scale of Rs. 2400-4000. Any recovery effected so far pursuant to the decision of the Board and on re-fixation of his pay in the pay-scale of Rs. 1640-2900, be refunded or readjusted suitably in favour of the appellant within a period of 3 months from today. In view of the fact that the appellant has already retired - the parties shall bear their own costs of these proceedings.

(D.M. Dharmadhikari, C.J.) (P.B.Majmudar, J.)

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